

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SAID GSSIME,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 09-5674 (JS) (ETB)

BETH WASSERMAN, et al.,

Defendant(s).

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TO THE HONORABLE JOANNA SEYBERT, United States District Judge:

The pro se plaintiff's in forma pauperis status ("IFP"), pursuant to 28 U.S.C. § 1915(g), was revoked by order dated August 3, 2010. This action was commenced on December 28, 2009.

The plaintiff's original complaint was dismissed, without prejudice to renewal. The renewed amended complaint was filed on May 28, 2010. The pro se plaintiff is not unknown to this court. See related actions CV 06-4988 and CV 09-5581.

This action was scheduled for an initial conference on December 8, 2010. No defendant has appeared in this action, nor is there any proof of service filed with the court.

The plaintiff was directed to show cause, on or before January 8, 2011, why this action should not be dismissed, without prejudice, based on plaintiff's failure to complete service within 120 days from the date of filing. See Rule 4(m), Fed. R. Civ. P. In response, the pro se plaintiff asserts, by correspondence dated December 15, 2010, that he cannot serve defendants Wasserman and Sulkis due to the alleged pendency of an order of protection. Plaintiff, who is presently incarcerated, claims that he cannot afford the services of a process server. Plaintiff offers no other justification for the failure to serve the other three (3) named defendants in this action, Kathleen Rice (District Attorney), ADA Robert

Schwartz and John Bray, attorney.

RECOMMENDATION

This action has been pending more than a year and no service has been effected on any defendant. Pursuant to Rule 4(m), this action should be dismissed without prejudice to renewal when he is in a position to pursue this action in a diligent manner in compliance with Rule 4(m).

OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any written objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of service of this Report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Failure to file objections within fourteen (14) days will preclude further appellate review. Thomas v. Arn, 474 U.S. 140, 145 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 299-300 (2d Cir. 1992).

Dated: Central Islip, New York
January 14, 2011

/s/ E. Thomas Boyle

E. THOMAS BOYLE
United States Magistrate Judge